

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 15-20652

vs.

HON. GEORGE CARAM STEEH

D-4 COREY BAILEY,

Defendant.

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**ORDER GRANTING IN PART AND DENYING IN PART  
MOTION FOR WRITTEN PROFFER AND HEARING ON  
ADMISSIBILITY OF CO-CONSPIRATORS' STATEMENTS AND  
SETTING FORTH PROCEDURE TO BE FOLLOWED [DOC. 777]**

This matter is before the court on defendant Corey Bailey's motion for a written proffer and hearing on admissibility of co-conspirators' statements. The motion has been joined in by defendants Graham, Gooch, Rogers, Adams, Arnold, Shy and Robinson [docs. 785, 786, 808, 795, 780, 797 and 804]. The motion has been briefed and the court heard oral argument on January 4, 2017.

The court will employ a process approved by the Sixth Circuit whereby statements are conditionally admitted "subject to later demonstration of their admissibility by a preponderance of the evidence." *United States v. Vinson*, 606 F.2d 149, 153 (6th Cir. 1979); *United States v.*

*Enright*, 579 F.2d 980 (6th Cir. 1978). Statements the government intends to offer as co-conspirator statements will be admitted subject to defendants' continuing objection, and the government will be required to show by a preponderance of the evidence before the conclusion of the government's case in chief that a conspiracy existed, that the defendants against whom the hearsay statement is offered were part of the conspiracy, and that the statement was made during and in furtherance of the conspiracy. *Vinson*, 606 F.2d at 152-53; *United States v. Odum*, No. 15-2280, 2017 WL 6524022, at \*6 (6th Cir. Nov. 30, 2017); FRE 801(d)(2)(E).

In order to minimize disruptions at trial, and to reduce the possibility of jurors hearing inadmissible evidence, the court will employ a procedure whereby the government is instructed to give notice to defendants of co-conspirator statements it will seek to introduce at least one day prior to offering such statements. The court will entertain an oral proffer as to the admissibility of said statements on the afternoon preceding the trial session in which the statements are anticipated to be offered into evidence.

Proffers may include a statement of anticipated facts supporting a conclusion that the statements were made in furtherance of the conspiracy and/or argument describing why certain statements constitute verbal acts. Notice that is given to defendants during a proffer session, occurring the

afternoon prior to the co-conspirator statement being offered at trial, will constitute sufficient notice.

So ordered.

Dated: January 17, 2018

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 17, 2018, by electronic and/or ordinary mail.

s/Marcia Beauchemin  
Deputy Clerk